

### **Remarks**

In the Final Office Action dated April 2, 2008, the following rejection is present: claims 1-17 stand rejected under 35 U.S.C. § 102(e) over Szymanski (U.S. Patent 6,851,086).

Applicant respectfully traverses the § 102(e) rejection of claims 1-17 because the cited portions of the Szymanski reference do not correspond to the claimed invention which includes, for example, aspects directed to a repeater node that initiates retransmission of data packets responsive to NACK signals. The Office Action appears to erroneously assert that the repeater and the transmitter can be one-in-the-same (“repeater is a transmitter which is equivalent to a transmitter as disclosed in Szymanski”). *See* page 4 of the final Office Action. In doing so, the Office Action fails to address the claimed invention which requires that the repeater be located on a path that is between the transmitter and the receiver. Applicant respectfully submits that it is not possible for a transmitter and a repeater to be the same item where the repeater must be located between the transmitter and the receiver.

For example, the Office Action cited to portions of Szymanski relating to repeaters in a fiber optic network (*see, e.g.*, Col. 36:55-63); however, the Office Action then cites to various portions of Szymanski (*see, e.g.*, Figures 21 and 22) relating to functionality of the transmitter and the receiver in an attempt to assert correspondence to the functionality of the claimed repeater, which retransmits data packets responsive to NACK signals. Specifically, the cited portions of Szymanski teach that transmitter 210, in response to NACK signals sent by receiver 248, retransmits data packets. *See, e.g.*, Figures 21 and 22; Col. 26:26-49. The cited portions of Szymanski do not teach that any such functionality is imparted to the cited repeaters, which would be located somewhere along optical channels 16 and 18 between the transmitter 210 and the receiver 248. Applicant submits that correspondence to the claimed invention is not established simply by citing to a transmitter and asserting that it corresponds because the claimed repeater includes a transmitter. Instead the cited portions of Szymanski must be arranged as required by the claimed invention. *See, e.g.*, M.P.E.P. § 2131. In this instance Szymanski’s transmitter 210 does not forward data packets as does the claimed repeater node; instead Szymanski’s transmitter 210 is the source of the data packets. Thus, Szymanski’s transmitter 210 does not correspond to the claimed repeater node. In addition

Szymanski's repeaters do not initiate retransmission of data packets responsive to NACK signals; as such, Szymanski's repeaters do not correspond to the claimed repeater node.

In view of the above, the cited portions of Szymanski do not correspond to the claimed invention and the cited portions of Szymanski are not arranged as required by the claimed invention. Accordingly, the § 102(e) rejection of claims 1-17 is improper and Applicant requests that it be withdrawn.

Applicant further traverses the § 102(e) rejection of claims 1-17 because the Office Action fails to show correspondence to the data packet being transmitted on multiple paths of a network and between the transmitter and the receiver. As discussed in the cited portions of Szymanski at Col. 11:14-45 and shown in the related Figure 1, Szymanski's transmitter and receiver are connected by a single (*e.g.*, fiber optic) path. This is also supported by the cited portion of Szymanski at Col. 35:49-56 and the related Figure 39. Moreover, Applicant respectfully submits that the claims require more than just identifying multiple paths (which has not been shown). They also require that a particular data packet is transmitted from the transmitter to the receiver along multiple paths. The fiber-optic receivers and transmitters taught by Szymanski and relied upon by the Office Action do not provide correspondence to such transmitting of a data packet on multiple paths. Accordingly, the § 102(e) rejection of claims 1-17 is improper and Applicant requests that it be withdrawn.

In further support of differences between the cited portions of the Szymanski reference and the claimed invention, Applicant respectfully submits that, in several instances, the pertinence of the cited portions is not readily apparent with respect to the Office Action's rejections of various dependent claims. In order to comply with 35 U.S.C. § 132, sufficient detail must be provided by the Examiner regarding the alleged correspondence between the claimed invention and the cited reference to enable Applicant to adequately respond to the rejections. *See, also*, 37 CFR 1.104 ("The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.") and M.P.E.P. § 706.02(j), ("It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply.") While the dependent claims are believed to be allowable for the reasons discussed above, the following examples are

presented to show some of the inconsistencies between the cited teachings of Szymanski and the claimed invention.

As a first example, regarding claims 2 and 3, Applicant respectfully submits that the cited portions of Szymanski fail to teach that all repeater nodes retransmit or that the transmitter and a repeater node both retransmit. The cited portion (*i.e.*, Col. 28:20-30) discusses packet selection protocol in a single transmitter, and as such, the pertinence of the citation is not readily apparent to limitations directed to all of the repeater nodes forwarding the data packet or to retransmission by both a transmitter and a repeater. Moreover, as discussed above, the cited portions of Szymanski do not teach that the repeaters initiate retransmission of data packets responsive to NACK signals. Accordingly, the § 102(e) rejection of claims 2 and 3 is improper and Applicant requests that it be withdrawn.

As a second example, regarding claim 4, Applicant notes that the cited portions of Szymanski expressly teach (as discussed above) that the transmitter retransmits the data in the event that the receiver issues a NACK. *See, e.g.*, Figures 21 and 22; Col. 26:26-49. In contrast, the limitations of claim 4 are directed to the transmitter not retransmitting after an issued NACK. Accordingly, the § 102(e) rejection of claim 4 is improper and Applicant requests that it be withdrawn.

As a third example, regarding claim 5, the cited portions of Szymanski expressly teach (as discussed above) that the transmitter listens for and responds to NACK signals. In contrast, the limitations of claim 5 are directed to not listening to NACK signals. Accordingly, the § 102(e) rejection of claim 5 is improper and Applicant requests that it be withdrawn.

As a fourth example, regarding claim 6, the cited portions of Szymanski (*i.e.*, Col. 35:47-56 and Col. 36:25-35) relate to a data switch and optical transmitters. Claim 6, however, includes aspects directed to using more than one path for a data packet sent from the repeater, such aspects are not taught by the cited portions of Szymanski. Accordingly, the § 102(e) rejection of claim 6 is improper and Applicant requests that it be withdrawn.

As a fifth example, regarding claims 9 and 17, Applicant notes that the cited portion of Szymanski (*i.e.*, Col. 27:29-34) teaches a “Stop and Wait” ARQ system in

which the transmitter waits until receiving an ACK. Because the transmitter is taught to be dependent upon the receiver by waiting for an ACK, Applicant submits that this portion does not teach waiting a predetermined amount of time, much less two different predetermined time intervals as in the claimed invention. Accordingly, the § 102(e) rejection of claims 9 and 17 is improper and Applicant requests that it be withdrawn.

Applicant has added new claims 18 and 19 which depend from claim 15. Applicant submits that claims 18-19 are allowable over the cited references for at least the reasons discussed above. *See, e.g.*, the impropriety of the rejection of claims 4 and 5.

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Aaron Waxler, of NXP Corporation at (914) 860-4296.

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